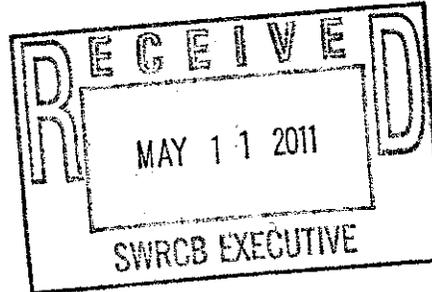




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Mark Dellinger
Special Districts Administrator



May 10, 2011

Ms. Jeanine Townsend
Clerk to the Board
State Water Resources Control Board
1001 I Street, Sacramento, CA 95814

**Subject: Sanitary Sewer System Waste Discharge Requirements
Review & Update COMMENTS**

Dear Ms. Townsend:

The Lake County Special Districts Administration appreciates the opportunity to comment on the State Water Quality Control Board's proposed revisions to the Sanitary Sewer System Waste Discharge Requirements (SSS WDRs). Special Districts manages the Northwest Regional Wastewater Collection and Treatment Facility, the Southeast Regional Wastewater Collection and Treatment Facility, the Kelseyville County Waterworks District No.3 Wastewater Collection and Treatment Facility, the Middletown Wastewater Collection and Treatment Facility and an additional wastewater collection system serving residents in the South Lakeport and Finley areas. These collection and treatment facilities serve over 33,500 customers. Staff and management work hard to successfully maintain and operate these systems and strive to maintain compliance with Waste Discharge Requirements (WDRs), extensive reporting requirements, and ever-increasing operational and financial challenges.

The proposed revisions to the SSS WDRs represent a major departure from the program that has been successfully implemented under the existing requirements. While we appreciate the State Water Board's efforts to address certain issues associated with the existing WDRs, the District is very concerned about several of the proposed revisions, especially those related to reporting of private lateral sewage discharges (PLSDs), and onerous additions to Sewer System Management Plan (SSMP) requirements that should not be mandated unless State Water Board guidance and funding is made available. As requirements become more complicated and confusing, more agency staff time must be (and is) directed toward preparing reports and re-organizing information and operating procedures, resulting in less time available for actually managing and/or conducting the appropriate operations and maintenance (O&M) activities to prevent Sanitary Sewer Overflows (SSOs) and properly maintain the collection system.

Also, the Lake County Special Districts Administration strongly opposes any kind of National Pollutant Discharge Elimination System (NPDES) permitting approach. Specifically, we would like to offer the following comments:

- 1. Sanitary sewer system regulations should not be adopted under a two-tiered WDRs and NPDES permit.**

We strongly oppose the two-tiered WDRs and NPDES permit alternative, whereby an SSO occurring previously or in the future would trigger the requirement to apply for an NPDES permit, and agree with several points included in the Staff Report also opposing an NPDES permit. Since the existing SSS WDRs and the proposed revisions to the SSS WDRs do not authorize sanitary-sewer overflows (SSOs) to waters of the United States, there is no need for an NPDES permit. The result of triggering an NPDES

permit would subject local public agencies to additional and more egregious non-governmental organization (NGO) lawsuits and higher administrative penalties with absolutely no demonstration that this would improve water quality or further reduce SSOs.

As described in the Staff Report, this alternative would also require significant additional Water Board staff resources to track and implement the different permit tiers. We understand that these staff resources are limited, and believe that they should instead be used to further improve SSO reduction efforts under the existing SSS WDRs.

2. The basis for mandatory reporting of Private Lateral Sewage Discharges (PLSDs) is not justified and creates an additional and inappropriate burden for District staff.

The SSS WDR would require enrollees to report spills from privately owned laterals when they become aware of them. Such reporting is currently voluntary, and our agency currently advises the responsible party of the notification responsibilities of both State and local agencies. Water Board staff has not provided adequate justification nor has it thoroughly considered the staffing and financial resources necessary to require the District to report PLSDs that are not affiliated or part of our collection system(s). The justification offered for this change is simply that the State Water Board wants to "get a better picture of" the magnitude of PLSDs and better identify collection systems with "systemic issues" with private laterals.

The Staff Report includes a reference to a study that indicated that the total volume of sewage from private laterals is about 5% of the total volume from SSOs, almost all of which never pose a threat to surface waters. Requiring the District to provide detailed information regarding such a small percentage of overflow volumes from parts of the system over which we have no control is not appropriate and would divert limited staff resources from higher priority issues that actually protect water quality and public health.

As to the goal of generating better information regarding PLSDs, we do not believe that the burden of requiring enrollees to report information or face being in noncompliance with the SSS WDR bears a reasonable relationship to the need for the information and the benefits to be obtained. In addition, enrollees reporting spills may be liable to the property owner for errors in reporting, and property owners may claim they are entitled to compensation from the local agency for repair or replacement costs stemming from the reported spill. Under the current voluntary reporting scheme, the enrollee can weigh these factors in deciding whether to report private lateral spills or not.

Furthermore, if enrollees are required to report spills whether or not they occur within the enrollee's system, multiple entities (city, county, POTW, etc.) could all be required to report a single private lateral spill with potentially differing estimates of volume and other information. Rather than enhance the Board's knowledge base, this can actually lead to greater confusion and require additional resources to sort out and match up the multiple reports.

We recommend that the State Water Board first work with the California Department of Public Health and local environmental health officers to determine if the desired information can be obtained through mutual agency cooperation. We believe that public health agencies have the best knowledge of overflows from laterals on private property, and are, in most instances, the most appropriate agencies to respond to these events.

3. Required reporting of PLSDs by all agencies does not improve the predicament faced by agencies that own lower laterals.

Requirements for reporting of SSOs are applicable to all "discharges resulting from a failure in the Enrollee's sanitary sewer system." (emphasis added) Requirements for reporting of PLSDs apply to all "discharges of wastewater resulting from a failure in a privately owned sewer lateral." (emphasis added)

These requirements do not change the fact that SSOs from lower laterals are unfairly attributed only to those agencies that own them. In order to solve the problem, we recommend that the CIWQS database and SSO/mile/yr data reflect *only* mainline spills as a performance measure. Otherwise, comparisons of these data among agencies are incorrect.

In addition, the requirement for Enrollees to report PLSDs as they become aware of should be removed from Provision 4.

4. Definitions related to private laterals are confusing and contradictory.

The following definitions are different than those referenced in the Lake County Sewer Use Ordinance, as explained below:

- Lateral – Segment(s) of pipe that connect(s) a home, building, or satellite sewer system to a sewer main.

The Lake County Sewer Use Ordinance defines the proposed definition of lateral as “Side Sewer” and defines the proposed definition of sewer main as “Main Sewer”. Also, the definition of a lateral should not include any reference to satellite sewer systems, as the management and performance of each can be very different. Satellite systems should have a separate and distinct definition.

- Private Lateral – Privately owned sewer piping that is tributary to an Enrollee’s sanitary sewer system. The responsibility for maintaining private laterals can be solely that of the Enrollee or private property owner; or it can be shared between the two parties. Sewer use agreements dictate lateral responsibility and the basis for the shared agreement. (emphasis added)

The Lake County Sewer Use Ordinance defines the proposed definition of Private Lateral as “Building Sewer” and is the portion between the foundation wall and the property line clean-out. The responsibility for maintaining is solely that of the private property owner.

- Private Lateral Sewage Discharge (PLSD)

This definition does not differentiate between blockages or problems in the Main Sewer, Lateral Sewer or the Building Sewer, as defined in the Lake County Sewer Use Ordinance. Wastewater discharges caused by blockages or other problems within Building Sewer portion of the Side Sewer is the responsibility of the private property owner and not the Enrollee.

These definitions should be reworked for clarity and accuracy. The Lake County Sewer Use Ordinance can be accessed through the Special Districts link on the Lake County website (<http://www.co.lake.ca.us>).

- #### **5. It is essential that State and Regional Water Board staff consider the specific reasons for each SSO in the development and extent of any enforcement action.**

The existing SSS WDRs included language in Provision D.6 that provided some reassurance that, in the case of an SSO enforcement action, the State and/or Regional Water Board would consider why the SSO might have occurred and to what extent it would have been reasonably possible for the Enrollee to prevent it.

Existing language reads: “*In assessing these factors, the State and/or Regional Water Boards will also consider whether...*”

In the proposed revisions to the SSS WDRs, this language was changed to read: “*In assessing these factors, the State and/or Regional Water Boards may also consider whether...*”

This proposed revision to the SSS WDRs would transform the existing enforcement discretion language, which expresses a clear statement of the State Board's intent regarding enforcement priorities and responses, into a purely advisory provision, which individual regional boards are free to follow or ignore as they choose. The factors described in (a) through (g) of Provision D.6 are highly relevant to the enrollee's efforts to properly manage, operate and maintain its system and these factors should definitely remain to be considered in enforcement actions.

It is imperative that the existing language be retained. Enrollees should not be made to suffer consequences for conditions that are outside their reasonable control. This proposed revision is not fair.

6. Significant additional Sewer System Management Plan (SSMP) requirements should not be mandated until the State Water Board provides guidance and funding.

The proposed "Risk and Threat Analysis" and "Staff Performance Assessment Program" are vague, not statistically supported, unnecessarily complicated, and overly prescriptive.

The proposed Risk and Threat Analysis of all sanitary sewer assets would be extremely complex and resource-intensive, and would not provide incrementally more benefit than that provided by an otherwise well-operated and managed system. It is not appropriate to require every agency to implement this requirement unless the Water Board can demonstrate that those agencies complying with current requirements have been ineffective in reducing SSOs. This program should also only be required if and when adequate Water Board guidance has been developed and funding is provided.

Requiring the development and implementation of the proposed Staff Assessment Program at a District level is unrealistic. The expectations outlined in the proposed revisions to the SSS WDRs suggest that District staff would be responsible for developing a program similar to the existing Technical Certification Program offered by the California Water Environment Association, which would require a substantial investment of resources to do redundant work at each agency. It is also not appropriate to require public agencies to train contractors (which are separate, private entities).

The Water Board should not implement these new requirements until a model program (or at least detailed program guidance) is provided. Also, the Water Board has not demonstrated that the current training requirements are deficient or insufficient.

7. SSMP sections (i) and (j) should be combined, because otherwise the requirements for routine review and revisions of the SSMP are redundant and contradictory.

SSMP Section (i) *Performance Targets and Program Modifications* and Section (j) *SSMP Program Audits* both require the Enrollee to evaluate the effectiveness of the SSMP and correct or update the document as necessary. Section (i) indicates that this process is to occur on an annual basis, while Section (j) specifies a minimum frequency of once every two years. We recommend that Water Board staff combine these two sections and clarify the requirements and time-line.

8. Requiring de-chlorination of clean-up water is counter-productive.

Prohibition C.3 indicates that potable water would have to be de-chlorinated before it could be used for spill clean-up activities (in the event water used for clean-up is not fully recovered). Placing restrictions on the use of potable water in cleaning up an SSO that is otherwise likely to violate either of the first two prohibitions simply adds further unnecessary challenges. In addition, the amount of potable water used, combined with the distance it would have to travel to reach surface water (so the chlorine would readily degrade) does not warrant the additional on-site operational difficulty in de-chlorination.

9. Provision 8 includes an incorrect assumption regarding sanitary sewer system replacement.

Provision 8 suggests that sanitary sewer systems will need replacing within the timeframe of the WDRs. The reference to "eventual replacement" should be removed because the need to replace sewers is dependent on several factors associated with condition assessment including: component condition (pipe, manholes); lift station component condition (wet wells, pumps, controls); and capacity, and should not be required to be replaced when they reach a certain age, especially when they are in good condition and functioning as designed. Provision 8 is overly prescriptive, and would not be a good use of limited public resources. For example, the useful life of certain types of high strength plastic pipe has yet to be determined.

10. Revisions to SSMP requirements are PREMATURE.

We are concerned that the proposed revisions to the SSS WDRs include significant changes to SSMP program requirements. As the Staff Report indicates, development and implementation of SSMPs has just been completed and time is needed so their effectiveness can be properly identified. We strongly urge that the existing SSMP requirements be preserved as in the existing SSS WDRs. Further, it is recognized that dramatically changing SSMP requirements now will likely lead to confusion regarding the SSMP requirements among enrollees, the public, and Water Board staff. As noted in early 2007, analysts for the State Water Resources Control Board examined the program and estimated the costs of compliance with the original requirements. The analysts looked at 21 agencies in Southern California (Orange County) which represented a range of need in developing and implementing additional programs to comply with the regulation. They concluded: "*The increased average annual cost (to comply with the WDRs) is \$71.86 per household.* The proposed revisions will certainly require additional funding and staff time for an already expensive program. Most of the communities represented by our wastewater systems are economically disadvantaged. Never the less, a 40% rate increase was passed in late 2010 in perhaps our poorest community, the City of Clearlake. There are census tracts within the City with a median household income of less than \$20,000 per year.

11. Language describing certain SSMP requirements should be revised/clarified as follows:

- *Organization* - Including names, email addresses, and telephone numbers for the staff described in paragraph (b) (ii) is excessive information and inappropriate in a public document. Only the position and phone number should be included.
- *Legal Authority* - Paragraph (c) (v) should be revised to read: "Restrict, condition or prohibit new connections under certain conditions." In addition, Paragraph (c) (vi) indicates that agencies must have legal authority to "limit the discharge of roots..." It is not clear if this phrase is intended to refer to limiting root intrusion (which would be covered by good standard specifications), or to limiting the illicit discharge of debris including cut roots (which is already included in paragraph (c) (i)). In any case, the word "roots" should be removed from this paragraph.
- *Operations and Maintenance Program*
 - *Map* - Updating GIS maps to identify and include all backflow prevention devices should remain optional, as it would be too onerous as they are not owned by the agency; this requirement should be removed.

Also, the last section of paragraph (d) (i) should be revised to read: "A map illustrating the current extent of the sewer system shall be included in the SSMP or in a GIS." Also, this requirement needs to be clarified. It is not clear if "the current extent of the sewer system" refers to a one page map of the service area, or the entire detailed map.

- *Rehabilitation and Replacement* – The third sentence in paragraph (d) (iii) should be revised to read: “Rehabilitation and replacement shall focus on sewer pipes that are at risk of collapse or prone to more frequent blockages due to pipe defects.” It is not correct to imply that age alone is a determining factor - it does not, nor is it correct to imply ‘aging’ is the same as ‘deteriorating’.
- *O&M and Sewer System Replacement Funding* – The first sentence in section (d) (vi) should be revised to read “The SSMP shall include budgets for routine sewer system operation and maintenance and for the capital improvement plan including proposed replacement of sewer system assets over time as determined by careful evaluation of condition of the system.”
- *Design and Performance Provisions* – The addition of the phrase “all aspects of” in both paragraphs (i) and (ii) should be removed; requiring each agency to update their standards and specifications to cover every last possible minor detail of sanitary sewer system construction and inspections just to meet this requirement would create an unwarranted burden on staff. Also, the phrase is not necessary and is already implied.
- *FOG Control Program* – Proposed revisions to (g) (iii) would simultaneously require legal authority to prohibit FOG discharges to the system and to require FOG dischargers to implement measures to prevent SSOs and blockages caused by FOG. This revised language contradicts itself, first by indicating that FOG discharges are to be prohibited, and then by including requirements for FOG dischargers. Also, the language appears to apply to both residential and commercial sources of FOG, but fails to recognize that logistical challenges may outweigh the benefits of *requiring* best management practices for residential FOG sources. We suggest and request that this existing language be preserved: “This plan shall include the following as appropriate:... The legal authority to prohibit discharges to the system and identify measures to prevent SSOs and blockages caused by FOG.”
- *Performance Targets and Program Modifications* – Progress towards improving sewer system performance and reducing impacts of SSOs is already described in the SSMP and will be adequately characterized by a review of SSO trends. Also, without specific guidance on how to develop these targets, the requirement is vague and offers no validation of success or failure. All references to performance targets should be removed from paragraphs (i) and (j).
- *Communication Program* – The proposed revisions to the SSS WDRs would require each agency to communicate with the public on an annual basis regarding the development, implementation, and performance of its SSMP. This specified timeframe suggests that an agency would send out a notice of some sort at a certain time each year, but would not apply to agencies that communicate information to the public primarily via their websites; online information is made available 24 hours a day. The original language should be retained as is.

12. The four-year Board re-certification requirement is excessive.

The proposed revisions to the SSS WDRs would also require the District to bring its SSMP before its governing board for re-certification at a minimum every four years. This frequency is excessive considering that infrastructure projects typically occur over a much longer timeframe. The District requests a re-certification every 5-10 years.

13. Notification requirements need to be clarified.

We support the Staff Report’s indication that only Cal EMA would need to be notified when spills to surface water of any volume occur. However, Paragraph G.4 indicates that Enrollees are to provide immediate notification of SSOs to the local health officer or the local director of environmental health, contrary to the instructions indicated in Section A of the Monitoring and Reporting Program and the Staff

Report. Our standard spill response activities include notifications to several local agencies and parties in the area of the event. A clarification as to who Cal EMA will notify would be beneficial.

In general, it is our view that significant proposed revisions to the SSS WDRs are premature and potentially overly burdensome. Implementation of the existing permit has already successfully resulted in reduced impacts of SSOs on surface water. Additional improvements are expected as capital improvements identified under the current permit are completed. It would be frustrating to have invested significant resources in meeting the current requirements only to have them change before our current efforts have come to fruition. We believe that it would be more productive for the Water Board to focus on bringing all agencies into compliance with the current permit rather than initiating sweeping revisions that would apply to all agencies, regardless of compliance history or the effectiveness of current programs. The Lake County Special Districts Administration hopes that the State Water Resources Control Board will take these comments under serious consideration. Thank you very much.

Sincerely,


Mark Dellinger

cc: Lake County Sanitation District Board of Directors

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Regional Water Quality Control Board -- Region 5

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